

**ORIGINAL**

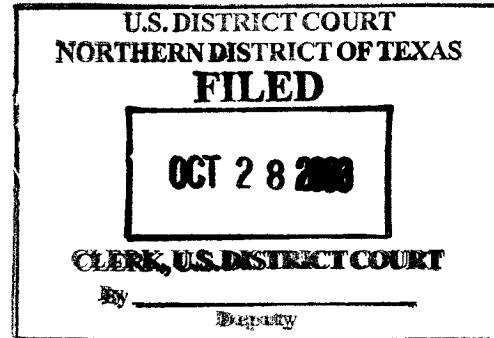
IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF TEXAS  
DALLAS DIVISION

**JEFFREY A. KRALLER and  
ALAN POLLЕНZ,**

Plaintiffs,  
§  
§  
§  
v.

**ALLIED PILOTS ASSOCIATION,  
a Labor Organization,**

Defendant.  
§  
§  
§



Civil Action No. 3 03CV--761P

**REPLY IN SUPPORT OF  
PLAINTIFFS' MOTION FOR  
STAY OF TRIAL PROCEEDINGS  
PENDING APPEAL**

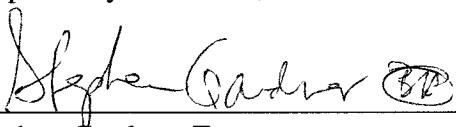
Defendant opposes plaintiffs' motion for a stay of this Court's proceedings on the basis of a conclusory assertion that the appeal may be denied on "various" grounds other than the merits. However, this Court expressly confined its order denying a preliminary injunction to a ruling on the merits of plaintiffs' claims. It would be highly unusual for the Court of Appeals to determine an appeal on any ground not considered by the district court, other than subject matter jurisdiction. Subject matter jurisdiction is not an issue, however, since no known defect has been identified by any party or the Court. Thus, it is highly unlikely that the Court of Appeals will decide the appeal on any ground *except* the merits of the plaintiffs' claims. If the Court of Appeals should conclude that plaintiffs' motion for a preliminary injunction should have been decided by this Court on grounds not considered by this Court, the Court of Appeals will in all likelihood remand to allow this Court the first opportunity to consider the previously unconsidered ground.

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Meanwhile, because an appeal as of right from an interlocutory order divests the district court of jurisdiction over all matters involved in the appeal, the plaintiffs' pending appeal divests this Court of jurisdiction to issue any further orders or a final judgment on the subject matter of the appeal – namely, the merits of plaintiffs' claims. *Chemlawn Services Corp. v. GNC Pumps, Inc.*, 823 F.2d 515, 518 (Fed. Cir. 1987), *citing Taylor v. Sterrett*, 640 F.2d 663, 667-68 (5<sup>th</sup> Cir.1981); *see Winchester v. U.S. Attorney for Southern District of Texas*, 68 F.3d 947, 948-50 (5<sup>th</sup> Cir. 1995).

The interests of judicial economy warrant a stay of the district court proceedings and expediting the appeal, so that this Court may proceed to final judgment with the benefit of the Court of Appeals' review of the merits. Plaintiffs have asked the Court of Appeals to expedite the appeal – and the *defendant has stated its opposition to expediting the appeal*. It appears that the defendant is simply taking whatever position, no matter how contradictory, that may propel this case toward a final judgment consistent with the outcome in its favor on the motion for a preliminary injunction.<sup>1</sup> Its tactics are understandable, but hardly constructive.

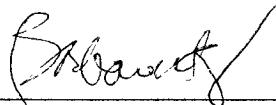
Respectfully submitted,



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<sup>1</sup> Counsel for defendant emphatically insisted, in the parties' scheduling conference, that defendant would **not** file a motion for summary judgment, and that such a motion made no sense. Defendant now takes the opposite position.

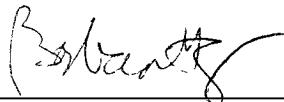


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#### **CERTIFICATE OF SERVICE**

Barbara Harvey, one of the attorneys for plaintiffs, hereby certifies that on this date she served a copy of the Reply in Support of Motion for Stay of Trial Proceedings on all counsel of record by first-class mail.



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